

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**PAUL PALMER, Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Howell, MI, Employer**

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**Docket No. 05-347  
Issued: April 12, 2005**

*Appearances:*  
*Paul Palmer, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

DAVID S. GERSON, Alternate Member  
WILLIE T.C. THOMAS, Alternate Member  
A. PETER KANJORSKI, Alternate Member

**JURISDICTION**

On November 23, 2004 appellant filed a timely appeal of the Office of Workers' Compensation Programs' merit decisions dated September 29 and June 23, 2004 finding that he had not established an injury on March 24, 2004 causally related to his federal employment. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUES**

The issues are: (1) whether appellant's claim was properly treated as a claim for a traumatic injury occurring on March 24, 2004; and (2) whether appellant has met his burden of proof in establishing that he sustained an injury on March 24, 2004 in the performance of duty.

**FACTUAL HISTORY**

On March 27, 2004 appellant, then a 38-year-old letter carrier, filed a recurrence of disability claim, alleging that on March 24, 2004 he sustained a recurrence of disability causally related to his February 17, 2004 employment injury. Appellant stated that he experienced

extreme pain and total leg numbness while carrying mail on March 24, 2004. He noted that he had some lingering stiffness in his back with some pain and numbness following his February 17, 2004 employment injury.

The Office examined appellant's claim and noted that he had sustained an employment-related acute lumbosacral strain and left hip contusion on February 17, 2004. Appellant returned to full duty on March 15, 2004. The Office determined that appellant's condition on March 24, 2004 was due to a new employment exposure and that his claim should be developed as a new traumatic injury.

Dr. Wendy King, a Board-certified internist, completed a report on March 25, 2004 and stated that appellant was working, walking up and down stairs, when his left leg became numb. Dr. King stated that appellant did not notice any new trauma. In a report dated April 7, 2004, she stated that when appellant returned to full duty he began to experience left lower extremity numbness. Appellant's magnetic resonance imaging scan showed L4-5 left parastential and lateral disc herniation with protrusion.

The Office requested additional factual and medical evidence from appellant by letter dated May 21, 2004.

Dr. Theodore C. delaCruz, a Board-certified neurosurgeon, completed a report on April 13, 2004 noting appellant's February 17, 2004 employment injury and stating that appellant experienced a gradual progression of his low back condition resulting in radiating pain in to the left leg with pain, weakness and sometimes numbness. He diagnosed left L4-5 herniated disc with neurological deficit. Dr. delaCruz performed a left percutaneous microdiscectomy on April 21, 2004 to repair a left L4-5 herniated nucleus pulposus.

By decision dated June 23, 2004, the Office found that the medical evidence in the record did not establish that appellant's current condition was due to his work activities on March 24, 2004 and denied his claim.

Appellant requested reconsideration on August 23, 2004 and related his history of back injury beginning in August 1999. He stated that he experienced severe pain in February 2004 different from what he had experienced before. Appellant returned to full duty and within a week began to experience numbness.

By decision dated September 29, 2004, the Office denied appellant's claim finding that he had not submitted sufficient rationalized medical opinion evidence to establish a causal relationship between his current condition and his employment incident on March 24, 2004.

### **LEGAL PRECEDENT -- ISSUE 1**

A recurrence of disability is the inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment which caused the illness. The term also means an inability to work that takes place when a light-duty assignment made specifically to accommodate an employee's physical limitations due to his or her work-related injury or illness is withdrawn (except when such withdrawal occurs for reasons

of misconduct, nonperformance of job duties or a reduction-in-force), or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations.<sup>1</sup> The Office's regulations define a traumatic injury as a condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected.<sup>2</sup>

### **ANALYSIS**

In the instant case, the Board finds that the Office improperly analyzed appellant's claim for a recurrence of disability as a claim for a traumatic injury. Appellant sustained his initial injury on February 17, 2004 and returned to full duty on March 15, 2004. On his March 27, 2004 notice of recurrence of disability appellant stated that he experienced extreme pain and total leg numbness while carrying the mail on March 24, 2004. He later stated that, after his return to full duty, he began to experience numbness within a week.

Appellant first sought medical treatment on March 25, 2004 and his attending physician, Dr. King, a Board-certified internist, stated that appellant experienced numbness in his left leg while walking up and down stairs in the performance of duty. She stated that appellant did not report any new trauma. On April 7, 2004 Dr. King stated that appellant began to experience leg numbness after he returned to full duty.

Dr. delaCruz, a Board-certified neurosurgeon, described appellant's history of injury on February 17, 2004 and stated that appellant experienced a gradual progression of his low back condition resulting in radiating pain into the left leg with pain, weakness and sometimes numbness.

The evidence in the record does not establish that appellant sustained a new traumatic injury on March 24, 2004. Appellant reported severe pain and numbness on March 24, 2004, but also that this pain and numbness began within a week after he returned to full duty. His physicians both indicated that appellant's condition was not due to a new trauma but was instead a gradual progression of his February 2004 low back condition resulting in radiating pain in the left leg with weakness and numbness.

As appellant believes that his increased symptoms were due to a spontaneous change in the nature and extent of his injury-related condition and as the history as given to his physicians supports this belief, the Board finds that appellant's claim should be developed as a recurrence of disability rather than a new traumatic injury. The Office's September 29, 2004 and June 23, 2004 decisions denying appellant's claim on the grounds that he had not established a new traumatic injury on March 24, 2004 are not appropriate under the law, facts and circumstances of the case and must be set aside. On remand, the Office should develop appellant's claim as a recurrence of disability and issue an appropriate decision.

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<sup>1</sup> 20 C.F.R. § 10.5(x).

<sup>2</sup> 20 C.F.R. § 10.5(ee).

### **CONCLUSION**

The Board finds that appellant's claim should be developed as a recurrence of disability as the record establishes that appellant believed that his leg numbness, pain and weakness developed gradually after his return to full duty without any specific intervening event or employment exposure.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated September 29 and June 23, 2004 are set aside and remanded for further development consistent with this decision of the Board.

Issued: April 12, 2005  
Washington, DC

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member